



IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1053

SOCIALIST LABOR PARTY, an
Unincorporated Association,
Petitioner,

vs.

CITY OF GLENDALE, a
Municipal Corporation,
Respondent.

ANSWER TO PETITION
FOR WRIT OF CERTIORARI

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ANSWER TO PETITION
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TO THE HONORABLE CHIEF JUSTICE OF THE
UNITED STATES AND TO THE ASSOCIATE
JUSTICES OF THE SUPREME COURT OF THE
UNITED STATES:

Respondent, prevailing party in the
State Court action entitled Socialist
Labor Party v. City of Glendale (ordered
not to be published by the Supreme Court
of the State of California), answers the
Petition for Writ of Certiorari filed by
petitioner as follows:

1.

1. GROUND FOR DENYING THE PETITION

The respondent contends that the Honorable California Court of Appeal, Second Appellate District, clearly applied recognized constitutional standards, and that the reasoning espoused by the Court of Appeal is consistent with the applicable decisions of the United States Supreme Court.

2. NATURE OF THESE PROCEEDINGS

The Socialist Labor Party instituted an action against the City of Glendale seeking declaratory and injunctive relief to restrain the City of Glendale from enforcing the provisions of Glendale Municipal Code, 1964, §§ 26-202, 26-204 (i) and 26-206 [Clerk's Transcript on Appeal (hereafter "C.T.") 131-132]. On August 22, 1975, petitioner was granted a preliminary injunction as prayed, and thereafter on April 21, 1977, petitioner was granted a summary judgment declaring Glendale Municipal Code, 1964, §§ 26-202 (c) and 26-204(i) unconstitutional as a matter of law [C.T. 347-349, Summary Judgment, Appendix "A", attached hereto].

Respondent timely filed its Notice of Appeal, and on July 12, 1978 the Honorable Court of Appeal for the State of California, Second Appellate District, reversed the granting of the Summary Judgment by the Superior Court. Socialist Labor Party v. City of Glendale, 82 Cal.App.3d 722, 147 Cal.Rptr. 422 (1978).

The petitioner, after a Petition for Rehearing was denied by the Court of Appeal, filed a Petition for Hearing before the Supreme Court of the State of California, and on October 4, 1978, the Petition for Hearing was denied, the Reporter of Decisions being directed not to publish in the official reports the opinion of the Court of Appeal. (Please see order denying hearing, Appendix "B" attached hereto.) The instant petition for Writ of Certiorari followed.

3. ISSUES PRESENTED

THE DECISION OF THE CALIFORNIA COURT OF APPEAL, SECOND APPELLATE DISTRICT, WAS IN ACCORD WITH APPLICABLE CONSTITUTIONAL PRINCIPLES.

It is beyond question that the Honorable Court of Appeal was not only fully cognizant of the First Amendment of the Constitution of the United States, but also recognized that the exercise of free speech is a fundamental right generally accorded preferential treatment and protection thereunder. [Appellate Opinion, pp. 6-7.] While recognizing the great protection afforded by the First Amendment, the Court acknowledged the fact that the exercise of free speech is not absolute, and in an orderly yet just society, the time place and means of expression must sometimes be limited so as to not unduly interfere with the rights of others. (Appellate Opinion p. 6.) This Honorable Court has also acknowledged reasonable regulations of First Amendment protected activity.

Kovacs v. Cooper, 336 U.S. 77; Cox v. New Hampshire, 312 U.S. 569; Jacobson v. Massachusetts, 197 U.S. 11; American Communications Assn. v. Douds, 339 U.S. 382, 94 L.Ed. 925 (1950); Police Department v. Mosley, 408 U.S. 92, 33 L.Ed.2d 212 (1972), and cases cited thereunder.

Throughout the history of this case, petitioner has steadfastly maintained that the numerical limitations set forth in Glendale Municipal Code, 1964, § 26-204(i) would effectively deny or severely limit the voice of the "Weekly People" [C.T. 200-208; Petition for Writ of Certiorari, p. 8]. Respondent has conceded that petitioner's news publication "may" have to relocate its newsracks under the Glendale Municipal Code, 1964. Respondent, however, continues to advocate that the relocation of plaintiff's newsracks, a maximum of 200 feet from the location which petitioner desires for maximum circulation, would not be of the magnitude to deny petitioner its rights under the First and Fourteenth Amendments of the United States Constitution. On its face, the numerical limitation imposed by respondent's ordinance cannot be said to be unconstitutional. It is not such a restrictive number so as to effectively eliminate or minimize the voice of the press. California Newspaper Publishers Assn., Inc. v. City of Burbank, 51 Cal. App.3d 50, 123 Cal.Rptr. 880 (1975).

Petitioner's sole purpose appears to be to maximize distribution of its news periodical [C.T. 210, Petition for Writ of Certiorari, pp. 6-7]. As the Honorable Court of Appeal espoused:

"The publisher of a newspaper has no special immunity from the application of general laws. He has no special privilege to invade the rights and liberties of others . . ." (Associated Press v. Labor Board, 301 U.S. 103, 132) . . . A public street is precisely that. It is a place for all of the public not subject to appropriation by any individual or select, self-appointed group claiming great constitutional fundamental privilege superior to the rights of all others. . . . Part of the sidewalks have been taken over by the newsracks of such newspapers and magazines. They imply that no one may say them nay . . ." [at pp. 17-18]

Further, the United States Constitution does not require government to accord the press special privileges not shared by the public generally. Pell v. Procunier, 417 U.S. 817, 41 L.Ed.2d 495, (1974).

The balance struck by the Glendale ordinance has been construed by the Honorable Appellate Court to pass constitutional muster, resulting in little or no intrusion on the right of a newspaper to distribute its product.

It appears that the Honorable Court of Appeal applied the proper constitutional standards enunciated in Kash Enterprises, Inc. v. City of Los Angeles, 19 Cal.3d 294, 138 Cal. Rptr. 53 (1977) and Hague v. Committee for Industrial Organization, 307 U.S. 496, 83 L.Ed. 1423 (1939), in that nothing in the broad language therein was directed or intended to be so expanded so as to permit a news publication to gain a portion of a public sidewalk permanently under the guise of free speech. [Opinion of the Court of Appeal, p. 18.]

Glendale Municipal Code, 1964, §§ 26-202 and 26-204 do not expressly nor impliedly regulate the content of a news periodical, nor do they create a limited forum for the disbursal of news periodicals within the City. Petitioner's argument that Glendale's priority system has the sole effect of opening up the public forum to a select few, while severely limiting access to the public forum to others is not factually supported. As the Honorable Court of Appeal stated, and as this respondent has previously contended, the case should be remanded to trial as suggested to determine if weekly publications have indeed been denied equal access to newsrack locations in the City of Glendale [Court of Appeal Opinion, p. 18].

Petitioner's remaining arguments that the Glendale ordinance abridges petitioner's First Amendment rights, and requires the exercise of petitioner's First Amendment rights in alternative forums are just plainly not borne out by the record in this case as set forth in the Opinion of the Honorable Appellate Court.

Throughout the history of this case, respondent has steadfastly maintained that the numerical limitation on newsracks was justified as an effort to preserve safe and uncongested streets and passageways. [C.T. 292-299.] Even the ordinance in question herein (Glendale Ordinance No. 4210) specifically directs itself to justifying its very terms. [C.T. 306.]

It is paramount to mention at this juncture that the City of Glendale has never had the opportunity to prove at trial the necessity and justification for the numerical limitation of newsracks. It is therefore asserted that the Court of Appeal rightly reversed the lower court in order to provide respondent with the opportunity to justify and substantiate its time, place and manner restrictions as applied to respondent.

As succinctly stated by the Honorable Court of Appeal [at p. 17]:

" . . . the right of the walking public to use the public sidewalks and public areas is of sufficient importance so as to require fair consideration, recognition and protection in determining the extent

to which 'free speech' shall warrant a particular means of distribution and to what extent a particular method of distribution or expression may be reasonably limited"; drawing on analogous situations in Lloyd Corp. v. Tanner, 407 U.S. 551, Young v. American Mini Theaters, 427 U.S. 50, Nat. Broadcasting Co. v. United States, 319 U.S. 190, Red Lion Broadcasting Co. v. F.C.C., 395 U.S. 367, 376-379.

PETITIONER HAS NOT RAISED A SUBSTANTIAL CONSTITUTIONAL QUESTION.

United States Supreme Court Rule 19, 28 U.S.C., states in pertinent part:

"1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, . . . indicate the character of reasons which will be considered:

"(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

A review of the lengthy and well reasoned opinion by the Honorable Court of Appeal discussing the current state of constitutional law regarding the newsrack method of distribution indicates the Court's recognition of the compelling interest of the municipality in maintaining clear, safe and uncongested streets and passageways, while permitting newsracks to concurrently occupy and utilize the limited sidewalk space to distribute newspapers.

The balance struck by the Glendale ordinance has been construed by the Honorable Appellate Court to pass constitutional muster, resulting in little or no intrusion on the right of a newspaper to distribute its product. It further appears that the Honorable Court of Appeal applied the proper constitutional

standards enunciated in Kash, supra, and Hague, supra, (reasonableness of time, place and manner restrictions), and that the Court properly weighed legitimate governmental interests of maintaining safe and uncongested streets and passageways with the publisher's rights to disseminate its views utilizing the newsrack method of distribution, and found that the method employed by the City of Glendale does not impinge upon the right of free speech by even the smallest voice. [Appellate Opinion, p. 7.]

The asserted conflict of constitutional authority in reality is nonexistent herein. The case at bar is not at odds with constitutional authority as enunciated by the United States Supreme Court and should be sustained. The Honorable Appellate Court's recognition of a need to balance or weigh the conflicting interests of the petitioner's First Amendment rights as claimed, and the rights of the community as a whole, taking into account the limited sidewalk space available, and petitioner's desire to maximize circulation, clearly indicates the Honorable Appellate Court's cognizance of

proper constitutional principles, and consistent therewith, the proper decision in this case. (Martin v. Struthers, 319 U.S. 141, 87 L.Ed. 1313 (1943); see also American Communications Assn. v. Douds, supra).

4. CONCLUSION

Respondent respectfully urges that the petitioner's request for a writ of certiorari be denied, and if necessary, that this matter proceed to trial to determine if the Glendale ordinance would in fact favor daily publications to the detriment or exclusion of weekly publications.

A denial of certiorari in this case would of course impart no implication or inference concerning the Court's view of the merits of this particular case, nor result in any precedent. (Hughes Tool Co. v. Trans World Airlines, 409 U.S. 363, 34 L.Ed.2d 577 (1973), reh. den. 410 U.S. 975; Maryland v. Baltimore Radio Show, 338 U.S. 912, 94 L.Ed. 562 (1950).) Further, this case has been ordered not to be published in the official California Reports, and therefore results only

in the law of the case and creates no precedent in the State of California. (California Rules of Court, Rules 976-977.)

For the reasons stated above, it is respectfully submitted that this Petition for Writ of Certiorari be denied.

Respectfully submitted

FRANK R. MANZANO,
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Deputy City Attorney

APPENDIX A

RM:rique 4/22/77

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F I L E D
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

SOCIALIST LABOR PARTY, an)
unincorporated association,)

Plaintiff,)

vs.)

CITY OF GLENDALE, a municipal)
corporation, et al.,)

Defendants.)

NQ C 130538
SUMMARY
JUDGMENT

The motion of plaintiff Socialist Labor
Party for summary judgment came on for
hearing on April 21, 1977, in Department
81 of the above-named Court, the Honorable

Robert I. Weil, Judge presiding. Plaintiff appeared by its attorneys Robin Meadow, Mark A. Spiegel and Fred Okrand, by Robin Meadow; defendant City of Glendale appeared by its attorney, Scott Howard. After reading and considering the declarations and memoranda filed by the parties and hearing oral argument, the Court granted plaintiff's motion for summary judgment. In that connection, the following proceedings were had and the following determinations were made:

1) The Court found, as a matter of law and on the basis of admissible evidence, that Glendale Municipal Code Sections 26-202(c) and 26-204(i) are constitutionally invalid.

2) Plaintiff requested that, on the basis of the California Supreme Court's decision in Kash Enterprises, Inc. vs. City of Los Angeles, L.A. No. 30688 (April 15, 1977), the Court declare unconstitutional Section 26-206 of the Glendale Municipal Code, such relief having been sought in the complaint herein. However, because Section 26-206 was not a subject of plaintiff's motion,

the Court declined to rule on its constitutionality.

3) The complaint herein seeks injunctive relief, and plaintiff has requested that injunctive relief be made part of the judgment herein. Although the Court finds that the Preliminary Injunction herein was properly granted, it also finds that permanent injunctive relief is unnecessary because it believes that defendant will abide by the terms of the declaratory judgment entered herein. Either party, however may petition this Court for injunctive relief should circumstances justify such an application.

Wherefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1) Sections 26-202(c) and 26-204(i) of the Glendale Municipal Code are unconstitutional, void and unenforceable under the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 2 and 7 of the Constitution of the State of California.

2) The Preliminary Injunction herein

dated August 22, 1975, is hereby dissolved.

THE CLERK IS ORDERED AND DIRECTED TO
ENTER THIS JUDGMENT.

DATED: APR 29 1977

/s/ Robert I. Weil
JUDGE OF THE SUPERIOR COURT

APPROVED AS TO FORM:

ROBIN MEADOW
MARK A. SPIEGEL
FRED OKRAND

APPENDIX B

By /s/ Robin Meadow
Robin Meadow

FRANK R. MANZANO, CITY ATTORNEY

By /s/ Scott H. Howard
Scott H. Howard

ORDER DUE
October 6, 1978

ORDER DENYING HEARING
AFTER JUDGMENT BY THE COURT OF APPEAL
2d District, Division 2, Civil No. 52122
IN THE SUPREME COURT OF THE STATE OF
CALIFORNIA

IN BANK

SOCIALIST LABOR PARTY,

v.

CITY OF GLENDALE

SUPREME COURT
F I L E D

OCT -4 1978
G.E. BISHEL,
Clerk

Deputy

Respondent's petition
for hearing DENIED.

Bird, C.J., and Mosk, J., are of the
opinion that the petition should be
granted.

The Reporter of Decisions is directed not to publish in the Official Reports the opinion in the abov_e entitled cause filed July 12, 1978 and appears in 82 Cal.App.3d 722. (Cal. Const., Art., VI; section 14; Rule 976, Cal. Rules of Court.)

Bird, C.J., and Clark, J., are of the view that the opinion should remain published.

Bird
Chief Justice